IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6156 OF 2007

Mr.Chinu P. Jhaveri & Anr. : Petitioners
(Orig.Plaintiffs)

V/s.

Mr.Ramnivas Ramdayal & Anr. : Respondents
(Orig.Defendants)

...

Mr.Raj Patel i/b. K.V. Aiyar & Associates for the petitioners.

Mr.Lalit V. Jain for respondent no.1.

...

CORAM : S.A.BOBDE, J.

DATE : AUGUST 24, 2007.

P.C.

1. Rule, returnable forthwith.

Mr.Jain waives service for the respondent no.1.

Heard by consent.

2. The petitioners have challenged the order setting aside the ex parte decree in their favour. According to the learned counsel for the petitioners, the learned trial Court has set aside the ex parte decree on the ground of medical disability of the respondent no.1 for which

evidence was tendered across the Bar on the date of hearing. This fact is not disputed. Nonetheless, the learned trial Court has observed that the petitioners are not seriously challenging the illness of the respondent no.1. The learned counsel for the petitioners states that the petitioners do seriously challenge the illness of the respondent no.1 since, according to him, the report pertains to some other period and not the relevant period. In these circumstances, it would be appropriate, in the interest of justice, to set aside the impugned order.

3. The impugned order is hereby set side. The trial Court shall decide the application for setting aside the ex parte decree afresh, in accordance with law. The rule is made absolute.

S.A. BOBDE, J.